

HOUSE BILL 3884

By Watson

AN ACT to amend Tennessee Code Annotated, Title 47,  
Chapter 18, relative to consumer protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-18-109, is amended as follows:  
47-18-109.

(a)

(1) Any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result of the use or employment by another person of an unfair or deceptive act or practice declared to be unlawful by this part, may bring an action individually to recover actual damages. Each such person seeking to recover damages for an unfair or deceptive act or practice declared to be unlawful by this part shall be required to prove that the deceptive act or practice caused him or her to enter into the transaction that resulted in his or her damages. Proof of a violation of this part shall not support an award of damages without proof that the person seeking damages suffered an actual out-of-pocket loss. The term "out-of-pocket loss" means an amount of money equal to the difference between the amount paid by the consumer for the good or service and the actual market value of the good or service that the consumer actually received. The actual market value of the good or service that the consumer actually received shall be the market price of the good or service that is most nearly comparable to what the plaintiff actually received. if evidence of a comparable good or service is presented, with appropriate adjustments to reflect

differences between the comparable good or service and the good or service actually received.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged unfair or deceptive act or practice took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(3) If the court finds that the use or employment of the unfair or deceptive act or practice was a willful or knowing violation of this part, the court may award three (3) times the actual damages sustained and may provide such other relief as it considers necessary and proper.

(4) In determining whether treble damages should be awarded, the trial court or jury may consider, among other things:

(A) The competence of the consumer or other person;

(B) The nature of the deception or coercion practiced upon the consumer or other person;

(C) The damage to the consumer or other person; and

(D) The good faith of the person found to have violated the provisions of this part.

(5) The provisions of this subsection do not apply with respect to alleged violations of the Tennessee Equal Consumer Credit Act of 1974, compiled in part 8 of this chapter.

(b) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory

judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided, that such action shall not be filed once the division has commenced a proceeding pursuant to § 47-18-107 or § 47-18-108.

(c)

(1) Any person who has been affected by an act or practice declared to be a violation of this part may accept any written reasonable offer of settlement made by the person or persons considered to have violated this part; provided, that the tender of acceptance of such a settlement offer shall not abate any proceeding commenced by the division pursuant to § 47-18-107 or § 47-18-108.

(2) Such a settlement may be set aside by a court of competent jurisdiction at the request of the affected person or of the division if such a request is made within one (1) year from the date of the settlement agreement and if the court finds the settlement to be unreasonable.

(3) In determining the reasonableness of a settlement, the court shall consider:

(A) The competence of the consumer or other person;

(B) The nature of the deception or coercion practiced upon the consumer or other person;

(C) The value of the consideration received; and

(D) The nature and extent of the legal advice received by the consumer or other person.

If the consumer or other person was not represented by legal counsel at the time of the offer of settlement, the person claiming the benefit of the settlement shall have the burden of establishing that it is reasonable.

(4) In any private action commenced under this section, the court may, upon the introduction of proof that the person against whom the action is filed has made a written, reasonable offer of settlement which has been communicated to the affected party, limit the amount of recovery to the terms of the offer of settlement.

(d) Any permanent injunction, judgment, or final court order made pursuant to § 47-18-108, or assurance of voluntary compliance entered into pursuant to § 47-18-107, which has not been complied with, shall be prima facie evidence of the violation of this part in any action brought pursuant to this section.

(e)

(1) Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorney's fees and costs.

(2) In any private action commenced under this section, upon finding that the action is frivolous, without legal or factual merit, or brought for the purpose of harassment, the court may require the person instituting the action to indemnify the defendant for any damages incurred, including reasonable attorney's fees and costs.

(3) The provisions of this subsection shall not apply to an action initiated by the division.

(f)

(1) Upon the commencement of any action brought under subsections (a) and (b), the clerk of the court shall mail a copy of the complaint or other initial pleading to the division and, upon the entry of any judgment, order, or decree in the action, shall mail a copy of such judgment, order or decree to the division.

(2) A copy of any notice of appeal shall be served by the appellant upon the director of the division, who in the public interest may intervene on appeal.

(g) No class action lawsuit may be brought to recover damages for an unfair or deceptive act or practice declared to be unlawful by this part.

SECTION 2. This act shall take effect July 1, 2008, the public welfare requiring it.